

REMARKS

By the Office Action of mailed January 18, 2006, Paper No. 01122006, Claims 48-54 are pending. Applicants thank Examiner Tawfik for the allowance of claims 45-47 and 52-54.

1. The Rejection of Claims 48-51 Under 35 U.S.C. §103(a)

Claims 48-51 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Neri et al. (U.S. 5,701,725) in view of WO 9856662A.

Applicants respectfully request reconsideration and withdrawal of the remaining rejections. As set forth below, the rejections are respectfully traversed.

A. The Subject Matter of the Rejected Claims

There is only one independent claim among the rejected claims presently pending, namely claim 48.

Claims 48 recites a process in which:

1.) the side tabs of a wrapper are sealed not once but twice, and the top and bottom tabs are also sealed twice; and

2.) Additionally, the order of the process steps is such that the side tabs of the wrapper are overlapped and thermally pre-sealed and then the bottom and top tabs are overlapped and thermally pre-sealed, and subsequently, the side tabs are permanently sealed and the bottom and top tabs are permanently sealed.

B. The Cited References Fail to Teach or Support All of the Elements of the Claims

The cited references fail to teach or suggest:

1.) the order of the steps namely that the side tabs are pre-sealed and then the top and bottom transverse and longitudinal tabs are pre-sealed before either the side tabs or the end top and bottom transverse and longitudinal tabs are permanently sealed; or

2.) the afore-described double sealing process of the side tabs and the top and bottom transverse and longitudinal tabs of the claims.

Neri (U.S. 5,701,725) fails to teach, disclose or suggest the order of the steps of claim 48. The Office Action refers to Figs. 1, 3 and 4 for the basis of the rejection of claim 48. More particularly, the Office Action comments that Neri discloses pre-scaling the side tabs via laser beam 53, thermally pre-sealing the bottom and top tabs via laser beam 62 and "subsequently

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permanently sealing the side tabs; and permanently sealing the bottom and top tabs (Figs. 1, 3 and 4; via the compressing means holding to the pack even after the laser beam seals the packs that could consider as permanently seal)". The Office Action fails to identify the "compressing means". No reference members are provided to identify the "compressing means".

Fig. 1 of Neri discloses laser beam 53 for sealing side tabs 22 and 23 and a subsequent laser beam 62 for sealing the top and bottom tabs 24, 25. No compressing means is disclosed for the side tabs after the sealing step for the top and bottom tabs provided by the second laser beam 62. Additionally, no compressing means is disclosed for end tabs 24, 25 after sealing by the second laser beam 62. Thus, assuming that a compressing means can constitute permanent sealing (which Applicants dispute as discussed below), no compressing means and thus no permanent sealing is disclosed in Fig. 1 following the sealing by laser beams 53 and 62 as recited in claim 48.

Referring to Figs. 3 and 4, Neri describes that strip 56 (of the side tabs sealed by laser beam 53) is sealed simultaneously with strip 65 (the strip of the top and bottom tabs sealed by laser beam 80) as product 3 travels through station 49. See Col. 5, lines 28-29. Thus, Figs. 3 and 4 do not disclose the order of the steps in claim 48 either, namely, causing the side tabs to overlap one another and then thermally pre-sealing the side tabs after which the bottom and top tabs are overlapped and thermally pre-sealed and subsequently the tabs are permanently sealed.

As noted previously and in the Specification, the order of the steps avoids undesired shrinkage and deformation of the wrapper. This is not contemplated by Neri since Neri does not contemplate use of a shrink wrap film.

Moreover, the only sealing devices identified in Neri are the laser devices. What are referred to as compressing devices are merely folding devices that serve to fold two portions or tabs of the wrapper onto each other and hold them in place while the laser device then seals the tabs. The compression or folding devices do not constitute devices for permanent sealing of the tabs, as recited in the claims. A complete reading of the Abstract of Neri and also the preceding lines 4-8 of column 2, makes it clear that the compressing devices serve only to superimpose one tab on top of another tab and it is the laser devices that operate as the sealing devices connecting the tabs. See, for example, column 3, lines 29-42, referring to "folding plate 32" and associated cam-Tappet device that "provides for positioning plate 32 as to close portion 18 of opening 17

and compress portion [tab] 22 onto portion [tab] 23 as product travels along path portion 1.” Therefore, the compressing device(s), as taught and disclosed, provide no sealing or connecting function whatsoever for the tabs.

Further, Neri’s laser beams do not serve to pre-seal the tabs. Instead, they serve to permanently seal the tabs. Neri recites, for example, “beam 62 through a focusing lens 67 to sweep beam 62 along strip 65 and seal portions 24 and 25 of wrapping 2” (emphasis added) and makes the same statement regarding beam 53. See Col. 4, lines 15-17 and 26-28. There is no mention or suggestion in Neri of any additional sealing required other than that provided by the laser beams.

To “seal” means “to fasten with or as if with a seal to prevent tampering” or “to close or make secure against access, leakage, or passage by a fastening or coating”. See Merriam-Webster Online Dictionary. No reference is provided in the Office Action to the element number(s) of any “compressing means” that serve the function of permanently sealing the tabs (as in claim 48). Whatever “compressing means” are present do not provide for the function of sealing, or fastening, the tabs, as the term “sealing” is commonly defined and understood.

The comments in the Response to Arguments at page 4 of the Office Action overlook this ordinary meaning of the word “sealing” and also the order of the steps discussed above.

Regarding claim 49, the Office Action acknowledges Neri does not disclose that its wrapping film is shrinkable. Yet the Office Action comments at page 3 “Neri discloses the pre-sealing steps and the permanent sealing steps do not initiate shrink wrapping of the film, see for example (Fig. 1).” This statement at page 3 is inconsistent with the acknowledgement that Neri fails to disclose shrinkable wrapper. Further, the comment fails to cite to any teaching or suggestion in the text of Neri concerning shrink wrapping of film. Thus, the rejection of claim 49 should be withdrawn.

Regarding claim 50, the Office Action comments at page 3 that it would be obvious to one having ordinary skill in the art to substitute Neri’s wrapping film by shrinkable film as suggested by the ‘662 reference. This comment fails to consider the order of the steps involved to avoid undesired deformation of shrink-wrap film when wrapping a pack and the problems solved by Applicants. Neither is taught or suggested by either reference. To suggest that such would be obvious, thus, amounts to a bare assertion that something is a design choice which is

insufficient to establish a "suggestion" in the art for the claimed invention. See, e.g., *Northern Telecom, Inc. v. Datapoint Corp.*, 15 U.S.P.Q.2d 1331, 1323 (Fed. Cir. 1990). As set forth by the Board of Patent Appeals and Interferences, the statement that something is a design choice is a conclusion and is not a reason. *Ex parte Garrett*, 1986 Pat. App. Lexus 8 (Bd. Pat. App. Interferences, 1986). Since the Office Action has not provided sufficient motivation for the claimed invention nor provided a reference showing desirability of the order of the steps of claim 50 combined with the use of shrink wrap film to overcome the problems addressed by Applicants' method, the Office Action has not established a prima facie case of obviousness and this rejection should be withdrawn.

Additionally, Applicants take issue with the "Official Notice" on page 3 that substitution of a shrinkable wrapper for that of Neri would be obvious. The substitution of shrink wrap film for the film of Neri would not be obvious in view of the fact that the problem to be solved by Neri has nothing to do with the problem being solved by Applicants' invention. Neri is concerned with the risk of wrappings being burned by the laser beam (See. Col. 1, lines 40-41) and not the problem of undesired deformation of the wrapper that can result when using shrink wrap film when not using Applicants' recited method and its order of steps.

C. Amendment to Claim 50

Claim 50 is amended to correct a typographical error in the intended term "further".

2. Fees

No fees are believed due as a result of this Response. The Office is authorized, however, to charge any fee deficiency in connection with this amendment to Deposit Account no. 20-0778.

CONCLUSION

In view of the comments and remarks herein, Applicants respectfully submit that all of the pending claims are in condition for allowance. Accordingly, Applicants respectfully request early and favorable action. Should the Examiner have any further questions or reservations, the Examiner is invited to telephone the undersigned Attorney at 770.933.9500 (ext. 213).

Respectfully submitted,



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